

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

| | | |
|---------------------------|---|-----------------------|
| SAMUEL FERRY, et al., |) | |
| |) | Case No. 4:14CV-02055 |
| Plaintiffs, |) | |
| v. |) | |
| |) | |
| DIANNE CRITCHLOW, et al., |) | |
| |) | |
| Defendants. |) | |

DEFENDANT BRENGLE’S MOTION TO DISMISS

COMES NOW Defendant William Brengle (hereinafter referred to as “Brengle”), by and through the undersigned counsel and pursuant to Fed. R. Civ. P. 12, hereby requests this Court to dismiss Plaintiffs’ “Second Amended Complaint” based upon the failure to state a claim upon which relief can be granted. In support of this request, Brengle states as follows:

1. On February 3, 2014, Plaintiffs Samuel Ferry, Richard Simpson and Michelle Tyler (“Plaintiffs”) filed a Petition in the Circuit Court of Jefferson County, State of Missouri.
2. On or about November 14, 2014, Plaintiffs filed a First Amended Petition in the Circuit Court of Jefferson County.
3. On December 15, 2014, A Notice of Removal to United States District Court was filed in the Circuit Court of Jefferson County.
4. On January 12, 2015, the Defendants each filed an Answer to the First Amended Petition as filed in the United States District Court.
5. On April 29, 2015, Plaintiffs filed their Second Amended Complaint.
6. On May 15, 2015, Plaintiffs filed a motion to amend the Second Amended Complaint

by interlineation. Plaintiffs state that the Second Amended Complaint contains passing, superfluous, and irrelevant mentions of 42 U.S.C. § 1985. Plaintiffs moved to remove the citations to 42 U.S.C. § 1985 and replace them with the citation to 42 U.S.C. § 1983.

7. The Second Amended Complaint contains three separate counts. In Count I, Plaintiffs allege a conspiracy claim pursuant to 42 U.S.C. Sections 1983 and the First and Fourteenth Amendments against Defendants Dianne Critchlow, Jamie Critchlow, Dan Baker, Angela Burns and William Brengle. In Count II, Plaintiffs allege a defamation claim against Defendants Dianne and Jamie Critchlow. In Count III, Plaintiff Tyler alleges a claim of intentional infliction of emotional distress against Defendants Dianne Critchlow and Jamie Critchlow.

8. The Plaintiffs have failed to allege facts and conduct specific to Defendant Brengle upon which relief can be granted.

9. Since the Plaintiffs fail to state any claim against Defendant Brengle, all claims against Brengle should be dismissed without prejudice.

10. Defendant Brengle has contemporaneously filed a Memorandum in Support of the Motion to Dismiss.

11. Defendant Brengle is entitled to judgment as a matter of law in his favor pursuant to Fed. R. Civ. P. 12(b)(6) and the corresponding standards set forth by the United States Supreme Court in *Twombly* and *Iqbal*, outlined in the supporting Memorandum.

WHEREFORE, Defendant William Brengle hereby requests this Court grant his Motion to Dismiss, that the Court dismiss any and all claims against Defendant William Brengle, that the Court award Defendant Brengle his costs incurred in connection with defending this matter, including attorneys' fees, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

GRANT, MILLER & SMITH, LLC

/s/ Gregory N. Smith

GREGORY N. SMITH #58482MO
WILLIAM P. GRANT #25883MO
Grant, Miller & Smith, LLC
7733 Forsyth Blvd., #1850
St. Louis, MO 63105
(314) 721-6677 (314) 721-1710 FAX

CERTIFICATE OF SERVICE

I hereby certify that on June 23, 2015, I filed the foregoing in the above mentioned action with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties of record.

/s/ Gregory N. Smith